

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JACOB BARNETTE,

Plaintiff,

v.

Case No: 8:22-cv-2598-JLB-TGW

TAMPA GENERAL HOSPITAL
BRANDON,

Defendant.

ORDER

The Magistrate Judge filed a Report and Recommendation in this matter on December 9, 2022 ([Doc. 6](#)) recommending that Plaintiff Jacob Barnette's Motion to Proceed in Forma Pauperis ([Doc. 2](#)) be DENIED without prejudice and that Mr. Barnette's Complaint ([Doc. 1](#)) be DISMISSED without prejudice. Specifically, the Magistrate Judge recommends that the Court not authorize Mr. Barnette to file his lawsuit without prepayment of fees because "he has not stated a claim showing that he is entitled to relief and that the court has jurisdiction over this matter" as is required by 28 U.S.C. § 1915(e)(2)(B)(i)–(ii). ([Doc. 6 at 2](#)). No objections have been filed, and the time to do so has expired.¹

¹ Under [28 U.S.C. § 636\(b\)\(1\)\(C\)](#), parties have fourteen days from the date they are served a copy of the Magistrate Judge's Report and Recommendation to file written objections to the Report's proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. Under [28 U.S.C. §](#)

A district judge may accept, reject, or modify a Magistrate Judge’s Report and Recommendation. [28 U.S.C. § 636\(b\)\(1\)](#). The factual findings in a Report and Recommendation need not be reviewed de novo in the absence of an objection, but legal conclusions are always reviewed de novo. *Id.*; [Cooper-Houston v. Southern Ry. Co.](#), 37 F.3d 603, 604 (11th Cir. 1994); [Garvey v. Vaughn](#), 993 F.2d 776, 779 n.9 (11th Cir. 1993). After an independent review of the record—and noting that no objections have been filed—the Court agrees with the well-reasoned Report and Recommendation and DENIES without prejudice Mr. Barnette’s Motion to Proceed In Forma Pauperis and DISMISSES without prejudice Mr. Barnette’s Complaint. However, the Court will allow Mr. Barnette to amend his Complaint to correct the deficiencies noted in the Magistrate Judge’s Report and Recommendation. *See Troiville v. Venz*, 303 F.3d 1256, 1261 n.5 (11th Cir. 2002) (explaining that 28 U.S.C. § 1915(e)(2)(B)(ii) dismissal does not allow the district court to dismiss an in forma pauperis complaint without allowing leave to amend as permitted by [Federal Rule of Civil Procedure 15](#).)

Accordingly, it is **ORDERED**:


1. The Report and Recommendation ([Doc. 6](#)) is **ADOPTED**.
2. Mr. Barnette’s Motion to Proceed In Forma Pauperis ([Doc. 2](#)) is **DENIED without prejudice**. Mr. Barnette may refile his Motion to Proceed in

[636\(b\)\(1\)](#), a party’s failure to object to the Report’s proposed findings and recommendations waives that party’s right to challenge on appeal the district court’s order adopting the Report’s unobjected-to factual findings and legal conclusions.

Forma Pauperis upon filing an Amended Complaint that states a claim upon which relief may be granted under. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

3. Mr. Barnette's Complaint ([Doc. 1](#)) is **DISMISSED** without prejudice. Mr. Barnette may file an Amended Complaint consistent with the Magistrate Judge's Report and Recommendation, and such an amended complaint must be filed on or before May 5, 2023.

ORDERED at Tampa, Florida on April 20, 2023.



JOHN L. BADALAMENTI
UNITED STATES DISTRICT JUDGE